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Web Site: www.auia.org**BEFORE THE ARIZONA CORPORATION COMMISSION****WILLIAM A. MUNDELL**  
CHAIRMAN  
**JAMES M. IRVIN**  
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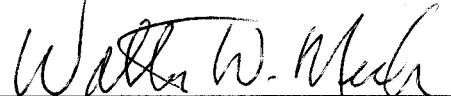
AZ CORP COMMISSION  
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IN THE MATTER OF THE JOINT APPLICATION	)	DOCKET NO.
OF SUN CITY WATER COMPANY AND SUN	)	W-01656A-98-0577
CITY WEST UTILITIES COMPANY FOR APPROVAL	)	SW-02334A-98-0577
OF CENTRAL ARIZONA PROJECT WATER UTIL-	)	
IZATION PLAN AND FOR AN ACCOUNTING ORDER)	)	
AUTHORIZING A GROUNDWATER SAVINGS FEE	)	
AND RECOVERY OF DEFERRED CENTRAL ARIZONA)	)	
PROJECT EXPENSES.	)	

**NOTICE OF FILING**

The Arizona Utility Investors Association hereby provides notice of filing its Closing Brief as required by the Hearing Officer's procedural order in the above-captioned matter.

DATED THIS 11TH DAY OF FEBRUARY, 2002.

  
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 WALTER W. MEEK, PRESIDENT

Original and ten (10) copies of the referenced Closing Brief were filed this 11th Day of February, 2002, with:

Docket Control  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

Copies of the referenced Closing Brief were hand-delivered this 11th Day of February, 2002, to:

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Arizona Corporation Commission

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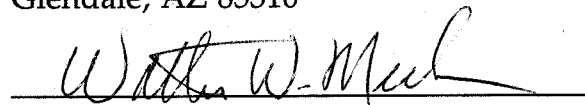


Copies of the referenced Closing Brief  
were mailed this 11th Day of February,  
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**CLOSING BRIEF  
OF  
THE ARIZONA UTILITY INVESTORS ASSOCIATION**

**I. Introduction**

The genesis of the just-completed evidentiary hearing in this matter – its pedigree, if you will – has been debated repeatedly by the parties. The hearing officer has been exceedingly generous in allowing the Sun City Taxpayers Association (“SCTA” or “Taxpayers”) to present testimony on a broad array of issues and concerns.

Perhaps, however, it is appropriate at this time to retrace the very simple steps that brought us to this point:

1. On May 7, 1997, the Commission issued its final order (Decision No. 60172) in a general rate case filed by Citizens Utilities for its service areas in the Sun Cities and Youngtown. Within that order, the Commission denied a request from Citizens to begin recovering the accumulated cost of retaining its Central Arizona Project (“CAP”) allocation for those communities on grounds that the CAP water was not used and useful. In fact, the Commission allowed Citizens to continue deferring its CAP costs only on condition that the company would develop a plan for using the water by December 31, 2000.

2. In response, Citizens invited several community governance organizations to work together to develop such a plan. In February 1998, the 19-member CAP Task Force began its research and deliberations. On May 19, 1998, the Task Force issued its recommended plan for utilizing CAP water. In its Final Report, the Task Force concluded with this succinct statement:

“Termed the Sun Cities/Youngtown Groundwater Savings Project, the Task Force recommended that CAP water be delivered to the Sun Cities through a non-potable pipeline. The CAP water would then be used to irrigate golf courses that have historically pumped groundwater. By doing this, every gallon of groundwater not pumped by the golf courses would be preserved for delivery to drinking water customers in the Sun Cities.” (See Final Report, CAP Task Force, P. 31)<sup>1</sup>

3        3. On October 1, 1998, Citizens filed an application with the Commission  
4 for approval of the Groundwater Savings Project ("GSP"). On Feb. 1, 2000, the  
5 Commission issued its order (Decision No. 62293) approving the GSP. The  
6 ordering paragraphs included the following unfinished business:

7        "IT IS FURTHER ORDERED that Citizens Utilities Company shall file  
8 the results of the completion of the preliminary design/updated cost  
9 estimate within six months of the effective date of this Decision  
10 including: a) the feasibility of a joint facility with the Agua Fria Division  
11 including the timeframe for any such joint facility; b) the need for all  
12 major elements of its proposed plan (e.g., storage and booster stations);  
13 and c) binding commitments from golf courses, public and private, and  
14 the terms and conditions related thereto." (See Decision No. 62293, P. 20,  
15 L. 25)

16        AUIA's purpose in revisiting this procedural history is to demonstrate  
17 that the CAP Task Force adopted a concise and unambiguous objective and the  
18 Commission, in accepting that strategy, was equally precise in identifying three  
19 elements that required follow-up by the Applicants.

20        That brings us to the just-concluded hearing. In the words of the  
21 procedural order dated June 5, 2001, the purpose of the hearing was "to  
22 determine whether the Applicants' Preliminary Engineering Report complies  
23 with Decision No. 62293..." In other words, whether the Applicants responded  
24 adequately to the follow-up requirements cited above.

25        AUIA believes that the Applicants met those requirements long ago and  
26 there are no other issues to be decided in this case. SCTA, on the other hand,  
27 has used this proceeding to re-litigate issues that were previously decided or to  
28 invent new ones that were not previously considered in any proceeding.

29        AUIA's opinion is shared by the Staff's engineering witness, Marlin  
30 Scott, Jr. In his Responsive Testimony, Mr. Scott asserted that the PER

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31        Note 1. The CAP Task Force report was not placed in evidence in this hearing. It was  
32 introduced in this docket by the Applicants in the hearing that preceded Decision No. 62293.  
33

3 adequately addressed the Commission's concerns and that the testimony of  
4 SCTA's witness, Dennis Hustead, went well beyond the Commission's  
5 directive in Decision No. 62293.

6 In commenting on SCTA's interpretation of the PER, Mr. Scott said,  
7 "Instead of accurately stating the goals and objectives, the SCTA attempts to  
8 persuade the Commission to reconsider items already decided." (See Exh. S-1,  
9 P. 4, L. 19 - P. 6, L. 15)

10 Regardless of whether we agree with SCTA's tactics, AUIA believes the  
11 hearing record shows that Staff and the Applicants have refuted or responded  
12 persuasively to all of the alleged deficiencies and proposed alternatives cited in  
13 Mr. Hustead's testimony.

14 Having said that, AUIA does not intend to examine each of the issues  
15 raised by SCTA. Instead, we will discuss the probable outcome(s) if, in fact, the  
16 Commission should mistakenly adopt either of SCTA's key strategies.

17 Those strategies are: 1) Study the Alternatives Forever; or 2) Shift the  
18 Burden to Sun City West.

## 19 **II. Study the Alternatives Forever**

20 In his Direct Testimony, Mr. Hustead leads off with 10 objections to the  
21 PER which he ascribes to faulty assumptions or deficient engineering. (See  
22 Exh. SCTA-1, P. 5, L. 11 - P. 7, L. 17) The clear implication is that the PER  
23 cannot be accepted and utilized until all of these items are investigated and  
24 resolved in SCTA's favor.

25 Likewise, with regard to his analysis of the various delivery alternatives  
26 which were examined in the PER, he concludes: "I do not believe the PER and  
27 Supplement provide a sufficient basis to proceed with any of the Alternatives  
28 reviewed by the PER." (See Exh. SCTA-1, P. 28, L. 17)

29 Mr. Hustead's unyielding approach to the PER points toward a never-  
30 ending process of second-guessing and re-examination because the answer  
31 will never be sufficient and there will always be another issue to explore.

32

33

3 Consider, for example, Mr. Hustead's discussion of Alternative E, a  
4 proposal to deliver CAP water from the Beardsley Canal, eastward through  
5 the Sun City West effluent distribution system. The PER engineers concluded  
6 that adequate hydraulic pressure cannot be achieved in a west-to-east  
7 direction on the Sun City West system. (See PER, Exh. A-1, P. D 19)

8 However, that isn't good enough for Mr. Hustead. He admitted that he  
9 did no hydraulic analysis, (See Tr. @ P. 50, L. 25 - P. 51, L. 4) but he insisted in  
10 his Direct Testimony (See Exh. SCTA-1, P. 23, L. 5 - P. 25, L. 19) and in  
11 Surrebuttal (See Exh. SCTA-2, P. 10 - P. 12) that he has devised improvements  
12 that could be made to the system to make Alternative E feasible.

13 He maintained that posture on cross examination (See Tr. @ P. 80, L. 25,  
14 -P. 81, L. 10) and is impervious to the fact that the owners of the system, the  
15 Sun City West Recreation Centers, would not permit flows from west to east.  
16 (See PER, Exh. A-1, Appendix C and Tr. @ P. 226, L. 11-22)

17 Neither the Applicants nor the Commission Staff can afford to spend  
18 unlimited energy and resources on this unending inquiry. Inevitably, this  
19 strategy leads to the Agua Fria recharge option as the solution because it is the  
20 only alternative that SCTA has endorsed. In 1996, SCTA opposed recharge  
21 and any CAP recovery, but they now embrace recharge. (See Surrebuttal  
22 Testimony of Raymond E. Dare, Exh. SCTA-2, P. 3, L. 18 and P. 5, L. 14)

23 Frankly, the Agua Fria recharge option would be acceptable to AUIA, but  
24 it is contrary to the recommendation of the CAP Task Force cited above and to  
25 the Commission's policy, as stated in Decision No. 62293.

### 26 **III. Shift the Burden to Sun City West**

27 SCTA's alternate strategy is to shift all or most of the GSP burden to  
28 Sun City West.

29 Mr. Hustead's final recommendation in his Direct Testimony is to  
30 authorize Citizens to proceed with distribution of CAP water only to Sun City  
31 West golf courses and to delay any system construction in Sun City for at least  
32 three years. Thereafter, if Sun City participation is required, he would restrict  
33 it to golf courses north of Bell Road. (See Exh. SCTA-1, P. 29, L. 21, - P. 30, L. 5)

3 Under the guise of responding to Mr. Hustead's engineering concerns,  
4 SCTA is engaged in a transparent attempt to take Sun City out of the equation  
5 altogether. Mr. Hustead's real intent is to maximize the use of CAP water in  
6 Sun City West and dispose of the surplus, if there is any, through recharge.  
7 (See Exh. SCTA-1, P. 29, L. 15-19)

8 Mr. Hustead, without the benefit of any hydro-geologic evidence,  
9 asserted that any reduced pumping in Sun City West would equally benefit  
10 residents of Sun City and Youngtown (See Tr. @ P. 89, L. 18 - P. 90. L. 7))

11 However, this approach ignores the greater consumption of  
12 groundwater by Sun City and its comparatively larger CAP allocation. (See  
13 Exh. A-1, P. B 15)

14 Mr. Hustead's hand-off strategy raises some thorny problems.

15 For example, in order for all of the CAP water to be used in Sun City  
16 West, would Sun City have to forego forever any claim to its CAP allocation?  
17 And would they do it? Unfortunately, there is no answer to these questions  
18 in the hearing record.

19 Furthermore, if Sun City West uses all or most of the CAP water, who  
20 will pay for the GSP?

21 When Mr. Hustead was queried about this on cross examination, his  
22 response was not precise, but he acknowledged that Sun City should bear  
23 some portion of the cost. (See Tr. @ P. 92, L. 6-14)

24 However, when Raymond E. Dare of SCTA was asked the same question,  
25 he was less positive than Mr. Hustead. He said, "...if you change the  
26 allocation, whoever gets the allocation pays for it." (See Tr. @ P.205, L. 18-20)

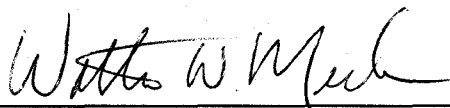
27 SCTA's alternate strategy is unfair and unresponsive to Decision No.  
28 62293. It is also not thoroughly researched and contains serious pitfalls. Most  
29 important, it will not solve the issue of CAP utilization, but will spawn  
30 continuing conflict and very probably more litigation at the Commission and  
31 in the courts.  
32  
33

3 **IV. Conclusion**

4 If the Commission were to accept SCTA's and Mr. Hustead's arguments,  
5 it would be veering sharply from the direction established by the CAP Task  
6 Force and the Commission's previous ruling in Decision No. 62293.  
7 Prolonging this inquiry would sentence the Groundwater Savings Project to a  
8 slow death. The Commission should affirm that the Applicants have met the  
9 requirements of Decision No. 62293 and that they can proceed with  
10 construction of the GSP.

11  
12 RESPECTFULLY SUBMITTED,  
13 this 11<sup>th</sup> day of February, 2002, by

14  
15 THE ARIZONA UTILITY INVESTORS ASSOCIATION

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19 \_\_\_\_\_  
20 Walter W. Meek, President